

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

In re:

KEVIN ADELL,

Chapter 11 Case

Case No. 9:03-bk-23684-ALP

Debtor. _____/

**ORDER ON DEBTOR'S OBJECTION TO PROOF OF CLAIM NO. 11
FILED BY JOHN RICHARDS HOME BUILDING COMPANY, LLC**

(Doc. No. 360)

The matter under consideration in this yet-to-be confirmed Chapter 11 case is an objection by Kevin Adell (Debtor) to Proof of Claim #11 filed by John Richards Home Building Company (John Richards). This Court heard argument of counsel and considered the relevant portions of the record and finds as follows.

On April 14, 2004, John Richards filed Claim #11 as a bifurcated claim in the total amount of \$7,454,366.26, comprised of a secured claim in the amount of \$2,800,000 and a general unsecured claim in the amount of \$4,654,366.26. The claim is based on a judgment entered by the Bankruptcy Court of the Eastern District of Michigan in the total amount of \$6,413,230.68 plus interest at the statutory rate (6.4 percent) entered on April 25, 2003 by the United States Bankruptcy Court for the Eastern District of Michigan. The judgment was entered by the Bankruptcy Court pursuant to Section 303(i) of the Code imposed

on the Debtor as a sanction for improperly initiating an involuntary petition against John Richards in the Michigan Bankruptcy Court.

The judgment of the Bankruptcy Court is composed of the following: \$4,100,000 compensatory damages; \$2 million in punitive damages; and \$313,230.68 as attorney fees and costs. It is the contention of the Debtor that the claim under consideration is not only grossly inflated by almost \$1 million but based on an interest charge which is not in compliance with 28 U.S.C. § 161, which is the federal judgment rate interest on the relevant date which is 1.33 percent. Thus, the total interest rate on a \$6.4 million judgment from the date of its entry until the petition date is \$47,236.

In addition, the Debtor contends that the \$6.4 million judgment is subject to an appeal, although on August 5, 2004, the United States District Court of the Eastern District of Michigan entered its opinion and order affirming the decision of the Bankruptcy Court the sanction award and in favor of John Richards.

It is the contention of the Debtor that he intends to appeal the order of the District Court to the Sixth Circuit Court of Appeals and the issues on appeal would include whether the Michigan District Court erred in affirming the Bankruptcy Court calculation of compensatory damages and its award of punitive damages and attorney fees and costs.

In addition, it is contended by the Debtor that Claim #11 is subject to setoff based on a lawsuit filed by the Debtor prior to the commencement of the Chapter 11 against John Richards in the Michigan Bankruptcy Court which was originally started in the Oakland County Circuit Court but was removed to the Michigan Bankruptcy Court.

At the oral argument, however, it was urged that the sanction order includes an award for attorney fees and that is a finite number of the award for attorney fees and costs and there is no provision in the sanction order, which provides for retention of jurisdiction to award additional fees and costs. Moreover, this Court certainly would not be in a position to make such an allowance since it was not this Court that issued the sanction award and since there is no independent statutory basis for an award, no such additional attorney fees award would be appropriate.

In addition, it is conceded now that the interest rate in the proof of claim was improper and, therefore, the interest rate should be calculated at the federal judgment rate of 1.33 percent or a total of \$47,236.

Based on the foregoing, this Court is satisfied that the Debtor's Objection to Claim #11 should be sustained in part and while the claim is allowed, it shall be limited to the original sanction award, which also included the attorney fees

award in the total of \$6,413,230.68 plus \$47,236 interest, for the grand total of \$6,460,466.68.

Since the original Claim #11 filed by John Richards was filed as a bifurcated claim contending to be a secured, although it is not indicated by what, in the amount of \$2,800,000, this will be allowed in this amount without prejudice to the Debtor to further challenge, if so deemed to be advised, the secured status of the claim and the balance of the unsecured claim in the reduced amount of \$3,660,466.68.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Debtor's objection to Claim #11 be, and the same is sustained in part and the claim is allowed in the amount of \$2,800,000 as secured and \$3,660,466.68 as an unsecured claim.

DONE AND ORDERED at Tampa, Florida, on Oct. 1, 2004.

/s/ Alexander L. Paskay
ALEXANDER L. PASKAY
United States Bankruptcy Judge